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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMONTE TREVON MOORE,

Defendant and Appellant.

B292300

(Los Angeles County
Super. Ct. No. MA071880)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Frank M. Tavelman, Judge. Affirmed.

C. Matthew Missakian, under appointment by the Court
of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Stephanie C. Brenan, and Jonathan M. Krauss,
Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Jamonte Trevon Moore drove a car while under the influence of alcohol and collided with another car, causing the death of its driver, Rodolfo Flores Hernandez. A jury convicted Moore of one count of second degree murder (Pen. Code, §§ 187, subd. (a), 189),¹ and one count of driving under the influence and causing bodily injury after having been convicted of another offense involving driving under the influence within the previous 10 years (Veh. Code, §§ 23153, subd. (a), 23560). The trial court sentenced Moore to 15 years to life imprisonment for murder, plus a consecutive term of 16 months for drunk driving causing injury with a prior.

Moore contends that his conviction must be reversed because there was insufficient evidence for the jury to conclude that he deliberately acted with a conscious disregard for human life. We affirm.

FACTS AND PROCEEDINGS BELOW

At around 8:30 p.m. on August 7, 2017, Hernandez had stopped his Toyota Corolla in the westbound lane of a four-way stop in Palmdale. A second car, a Toyota Highlander carrying Celia C. and her son Gabriel C., was traveling southbound at the same intersection.

Hernandez began to proceed into the intersection. At the same moment, Moore, who was traveling northbound, drove his Ford Fusion into the intersection at a high speed. Moore collided with the driver's side of Hernandez's Corolla, pushing the Corolla back approximately 25 feet into Celia C.'s Highlander. Data captured on the Fusion's crash data recorder, together with physical evidence of the area around the crash site, showed that Moore was

¹ Unless otherwise specified, subsequent statutory references are to the Penal Code.

driving into the intersection at approximately 65 miles per hour, and that he did not swerve or apply the brakes until less than half a second before he collided with Hernandez.

After the collision, Celia C. exited her Highlander to check on the driver of the Corolla. She saw that the driver's side of the Corolla was almost completely demolished, and Hernandez was pinned against the passenger door, apparently unconscious. While Celia C. and another driver who was present on the scene called 911, Moore exited his vehicle and walked toward the Corolla. He said to Celia C. and the others present, "You guys are f[uckin]g tripping." He then returned to his car and began smoking a cigarette.

Hernandez suffered multiple blunt-force traumatic injuries and died on the scene. Celia C. and Gabriel C. both suffered back injuries that required them to visit a chiropractor for treatment.

Police officers who responded to the scene of the accident smelled alcohol on Moore's breath. Officers performed field sobriety tests both on the scene and later at a hospital, and all the tests indicated Moore was intoxicated. Moore's conduct at the hospital—appearing disoriented, blowing kisses at a camera filming him—also suggested intoxication. A blood test taken approximately one hour and 15 minutes after the accident showed a blood-alcohol concentration of 0.23%, and a breath test administered shortly thereafter indicated a blood-alcohol concentration of 0.246%. These results were approximately triple the legal limit of 0.08%. (See Veh. Code, § 23152, subd. (b).) Moore also tested positive for marijuana, and police officers discovered marijuana buds on the seat of his car.

At trial, the prosecution introduced evidence showing that Moore pleaded no contest in 2010 to a charge of driving under the influence. At the plea hearing in that case, the trial judge

read Moore an advisement warning him that “it is extremely dangerous to human life to drive while under the influence of alcohol or drugs or both,” and that if as a result of his driving under the influence “someone is killed, [he] can be charged with murder.” A representative of a traffic program Moore attended following his prior conviction testified that, during the course of his three-month program, Moore received multiple similar warnings. In an interview with police at the hospital approximately six hours after the accident, Moore stated that he knew that drinking and driving is bad “[b]ecause people die from that shit every fucking day.”

DISCUSSION

Moore contends that his conviction must be overturned because there was insufficient evidence to show that he acted with conscious disregard for human life, as is required to support a second-degree murder conviction under an implied malice theory. We disagree.

“When reviewing a challenge to the sufficiency of the evidence, we ask ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” (*People v. Edwards* (2013) 57 Cal.4th 658, 715 . . . , quoting *Jackson v. Virginia* (1979) 443 U.S. 307, 319) Because the sufficiency of the evidence is ultimately a legal question, we must examine the record independently for “substantial evidence—that is, evidence which is reasonable, credible, and of solid value” that would support a finding beyond a reasonable doubt. (*People v. Boyce* (2014) 59 Cal.4th 672, 691) (*People v. Banks* (2015) 61 Cal.4th 788, 804.)

To be guilty of murder, a defendant must kill “with malice aforethought.” (§ 187.) “[M]alice may be express or implied.” (§ 188.) It is express when the defendant “manifest[s] a deliberate intention to unlawfully take away the life of a fellow creature.” (§ 188, subd. (a)(1).) “[M]alice may be implied when a person, knowing that his conduct endangers the life of another, nonetheless acts deliberately with conscious disregard for life.” (*People v. Watson* (1981) 30 Cal.3d 290, 296 (*Watson*), italics omitted.) So long as these elements are met, a defendant who causes a fatal automobile accident as a result of driving under the influence of alcohol or drugs may be convicted of murder under an implied malice theory. (See *id.* at p. 298.)

Moore acknowledges that he had prior knowledge of the risk of driving under the influence of alcohol. Nevertheless, he contends that this was insufficient to support a conviction for second-degree murder in the absence of some additional evidence that he acted with conscious disregard of that risk. Moore cites several examples of factors, none of them present in this case, that courts have relied on in finding substantial evidence of conscious disregard of risk in drunk driving. Thus, courts have pointed to evidence that a defendant knew at the time he began drinking that he would have to drive a car afterwards. (E.g., *Watson, supra*, 30 Cal.3d at pp. 300-301; *People v. Johnigan* (2011) 196 Cal.App.4th 1084, 1091 (*Johnigan*).) In some cases, the defendant was asked not to drive, or offered a taxi. (E.g., *People v. Autry* (1995) 37 Cal.App.4th 351, 359; *People v. Wolfe* (2018) 20 Cal.App.5th 673, 678 (*Wolfe*).) In other cases, the court noted that the defendant continued driving after experiencing a near collision or even seeing other cars on the road, reasoning that these experiences would have made the defendant conscious at that moment of the dangers of continuing to drive. (E.g., *Watson, supra*, 30 Cal.3d at pp. 300-301; *People v.*

Albright (1985) 173 Cal.App.3d 883, 887.) In this case, the prosecution presented little evidence regarding Moore's actions prior to the crash, and thus, none of the above factors are present.

But although courts have found all of these factors relevant, they are not required for a finding of implied malice. (*People v. Moore* (2010) 187 Cal.App.4th 937, 942; *Johnigan, supra*, 196 Cal.App.4th at p. 1091.) Moore admitted mere hours after the accident that he knew drunk driving was dangerous "[b]ecause people die from that shit every fucking day." When a defendant knew of a risk prior to taking action, we see no reason why a jury cannot reasonably infer that the defendant acted in conscious disregard of the risk. (See *People v. Superior Court (Costa)* (2010) 183 Cal.App.4th 690, 697 ["It is unnecessary that implied malice be proven by an admission or other direct evidence of the defendant's mental state; like all other elements of a crime, implied malice may be proven by circumstantial evidence."].) Indeed, the only reason we can imagine why Moore would *not* have been conscious of the risks of his actions is that he was intoxicated. But voluntary intoxication is not a defense to implied-malice murder. (*Wolfe, supra*, 20 Cal.App.5th at pp. 690-691.)

We disagree with Moore's contention that our reasoning "suggests that every fatal accident caused by drunk driving is, per se, murder." Our role is solely to judge the sufficiency of the evidence. (See *Wolfe, supra*, 20 Cal.App.5th at p. 681.) As our Supreme Court stated in *Watson*, "[w]e do not suggest that the . . . facts [of the case] conclusively demonstrate implied malice." (*Watson, supra*, 30 Cal.3d at p. 301.) If drunk-driving defendants are charged with and convicted of murder more often than the *Watson* court anticipated, it may be not because courts are misinterpreting *Watson*, but rather because the public has become more aware of the risks associated with drunk driving in the four

decades since *Watson* was decided. In this case, the jury concluded that the prosecution had met its burden, and we cannot say as a matter of law that that conclusion was incorrect.

DISPOSITION

The judgment of the trial court is affirmed.

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ROTHSCHILD, P. J.

We concur:

CHANEY, J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.